

Free recording in accordance with
California Government Code
Sections 6103 and 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Multifamily Housing Program
Department of Housing and
Community Development
P.O. Box 952054
Sacramento, CA 94252-2054
Attn: MHP Program Manager

**LEASE RIDER
AND
ESTOPPEL AGREEMENT**
(Ground Lease)

This Lease Rider and Estoppel Agreement (the "Agreement") is made and entered into as of _____, 2004, for reference purposes only, by and among _____, a _____ (the "Landlord"), _____, a _____ (the "Lessee"), and the Department of Housing and Community Development, a public agency of the State of California (the "Department") in consideration of the following facts and circumstances:

A. Landlord is the fee simple owner of that certain real property described in Exhibit A attached hereto and incorporated herein (the "Property");

B. Landlord and Lessee entered into the following ground lease of the Property: that certain Ground Lease dated _____ and recorded **[to be recorded]** in the official records of _____ County, California (the "Official Records") as Instrument No. _____ as amended **[specify amendments]** (the "Lease");

C. Pursuant to the Lease, Lessee has agreed to develop **[acquire]**, construct **[rehabilitate]**, own, operate and manage a rental housing development on the Property consisting of not less than _____ residential rental units. Lessee is the owner of the fee interest in all of those certain buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with such real property and owned by Lessee or in which Lessee has an interest, together with all additions to, substitutions for, changes in our replacements of the whole or any part of said articles of

property (collectively, the "Improvements."). Collectively, the Property and the Improvements are hereinafter sometimes referred to as the Development (the "Development");

D. The Department has agreed to loan an amount not to exceed _____ and no/100 Dollars (\$_____) (the "Loan") to Lessee to finance the Development, in part, pursuant to the _____ Program ("_____"). The Loan is subject to numerous terms and conditions, including without limitation, the execution and delivery of this Lease Rider and Estoppel Agreement;

E. As a further condition of the Loan and pursuant to the requirements of the Program, Lessee and the Department have entered into a Regulatory Agreement, including any amendments thereto (the "Regulatory Agreement"), governing the use, occupancy, operation, management and ownership of the Development. Landlord and Lessee hereby waive any such provisions of the Lease in conflict with or which would frustrate Lessee's compliance with the Regulatory Agreement in favor of the terms of the Regulatory Agreement.

F. The Loan will be evidenced by a Promissory Note (the "Note") from Lessee and secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Trust Deed") on Lessee's interests in the Property; and

G. Lessee and Landlord have requested that the Department accept the Lease as security for the Loan. In order to induce the Department to make the Loan, Landlord and Lessee have agreed to enter into and record this Agreement for the benefit of the Department, its successors, and assigns.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, the Department, Lessee and Landlord hereby agree as follows:

1. Leasehold. As used herein, "Leasehold" means all of Lessee's interest in the Property described in Exhibit A, in the Development, in the Improvements now or hereafter located on the Property, all options contained in the Lease or granted in connection with the Lease, all other rights of Lessee under the Lease, and all subleases entered into in connection with the Lease (the "Subleases").

2. Representations and Warranties of Landlord. Landlord hereby represents and warrants to the Department as follows:

a. Title. Landlord's interest in the Development is free and clear of all liens, encumbrances, covenants, easements, licenses, judgments, or other matters of record except those shown as affecting the fee interest of the Property in that certain Preliminary Report **[or Pro Forma Title Policy]** regarding the Property

issued on _____, 200____, by _____
[title/escrow company], for escrow no. _____ (the "Report").
Landlord has not required or permitted, and has no knowledge of any other matters
of record to be recorded that are not contained in the Report.

b. Priority. The Lease is superior to any and all mortgage liens on the Property.

c. Transfers by Landlord. Landlord has not assigned, mortgaged, or otherwise
hypothecated or transferred, or agreed to assign, mortgage or otherwise
hypothecate or transfer, its interest in the Property and the Development in whole or
in part, except as shown in the Report and except as security for loans to Lessee
approved in writing by the Department.

d. Status of Lease.

(1) Landlord is the current Lessor under the Lease. The Lease is in full force,
the Lease is not void, voidable or terminable at the option of any party thereto or
of any other person or entity claiming an interest in or to such Lease or the
Development, and there has been no default thereunder on the part of Lessee,
nor has any event occurred which, with the giving of notice or the passage of
time, or both, would be an event of default thereunder. Landlord has not been
informed of and has not otherwise received notice from Lessee or from any
other person or entity concerning any alleged default on the part of Landlord
under the Lease. There exist no defenses or offsets to enforcement of the
Lease by Lessee.

(2) Any consent or approval of any third party (including any lender) that is
required to deliver this Agreement has been obtained.

(3) No alterations, improvements or additions now exist on the Property that
have not been approved by the Landlord.

e. Other Agreements. All terms and conditions of the Lessee's tenancy under the
Lease are set forth in the Lease and there have been no further or other
supplements, amendments, modifications or extensions thereof except those
submitted to and approved by the Department. Nothing in this Lease Rider is
intended to waive, supercede, modify or terminate any provision of the Lease
granting rights to the Department as a Mortgage Lender.

f. Lease Term. The date of the commencement of the Lease term is
_____ and will end on _____. All conditions precedent to
the effectiveness of the Lease or the exercise of any of Lessee's rights

thereunder have been fully satisfied. Lessee has the following options to extend the lease term: _____.

g. Development. The Development constructed, or to be constructed, by Lessee on the Property satisfies all requirements affecting the design, use or characteristics of such Development imposed by Landlord under the Lease or otherwise, any and all applicable provisions of federal, state and local laws, and all agreements with any public entities concerning the Development, as amended from time to time.

h. Insurance. All notices, certificates, binders, endorsements, copies of policies, and receipts required under the Lease have been delivered and approved by Landlord.

3. Cancellation, Transfer of Interest.

a. Landlord and Lessee agree that so long as the Department, its successor or assigns holds the Trust Deed and Regulatory Agreement encumbering the Property, no termination of the Lease by Lessee, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of the Department, which consent shall be in the Department's sole and absolute discretion, and may be conditioned upon the satisfaction of such terms and conditions as the Department may prescribe. Any attempt by Lessee to take such action shall be void without the Department's prior written consent.

b. Landlord agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development without the prior written approval of the Department, which consent shall be in the Department's sole and absolute discretion, and may be conditioned upon the satisfaction of such terms and conditions as the Department may prescribe. If the Department approves any such transfer, conveyance, sale, hypothecation, assignment or other encumbrance of its interest, or any portion thereof, in the Property or the Development, Landlord will require that any purchaser, assignee or transferee expressly assume all of the obligations of Landlord under the Lease and this Agreement by a written instrument recordable in the Official Records.

c. Bankruptcy. Neither the Landlord nor the Lessee, in the event of bankruptcy by either, will take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the Lease or otherwise render it unenforceable in accordance with its terms.

d. No Merger. There shall be no merger of the Lease or any interest in the Lease,

nor of the Leasehold interest, with the fee estate in the Property if the Lease or such interest therein, or such Leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the Leasehold estate created thereby may be conveyed or mortgaged in a leasehold mortgage, deed of trust, or other security instrument to a leasehold mortgagee that shall hold the fee estate in the Development or any interest of the Landlord under the Lease.

4. Consent to Assignment, Payment of Rent.

a. Landlord hereby consents to and approves the following to the extent such consents or approvals are required under the Lease:

(1) Lessee's encumbering the Lease, the Leasehold and the Development by the Trust Deed and the Regulatory Agreement; possession of the Property and any Development thereon by the Department or by a receiver under the Trust Deed or the Regulatory Agreement; and sale of the Leasehold and the Development by foreclosure under the Trust Deed or transfer by deed in lieu of foreclosure;

(2) Assignments to the Department or its designee of any subleases and any and all rents from such subleases; and

(3) Sale or assignment of all or any part of any interest in the Leasehold to any purchaser at a foreclosure sale under the Trust Deed or to any transferee of a deed in lieu of foreclosure (such purchaser or transferee, including the Department, is collectively referred to as the "Transferee"), and to subsequent transfers without restriction (all such assignments, transfers, and subsequent transfers referred to in this Agreement as the "Transfer"). Any such Transferee, upon the Transfer of all its interest in the Development and the Leasehold, shall be relieved of all liability under the Lease accruing after date of such Transfer.

b. Nothing in this Agreement, in the Trust Deed or in the Lease shall impose on the Department the obligations of Lessee under the Lease or require the Department to assume the Lease unless the Department forecloses on the Leasehold under the Trust Deed or accepts an assignment or deed in lieu of foreclose.

5. Notice of Defaults; Termination Notice.

a. Notice and Cure. Landlord shall provide simultaneously to the Department a written copy of all notices and demands, including, without limitation, notices of default or breach which Landlord has given, delivered or sent to Lessee under the Lease. No notice or demand under the Lease shall be effective unless and until a copy of such notice is provided to the Department as provided herein. Any notice of default under the Lease or this Agreement shall describe the default(s) with reasonable detail. The Department shall have the right, but not the obligation, to cure any breach or default within the time period given in the Lease; provided that, if such notice to the Department is not given or is delayed for any reason, the period of time within which the Department may cure any such breach or default shall commence upon receipt by the Department of such notice. Landlord and Lessee authorize the Department to enter the Development for the purpose of preventing defaults or exercising its right to cure and any other powers given the Department under the Trust Deed, this Agreement or the Lease.

b. Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure the default, Landlord shall not terminate the Lease on account of such default but shall give the Department a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Landlord intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after the Department's receipt of the Termination Notice, provided that Landlord agrees to extend such termination date if the Department reasonably requires additional time to accommodate the Department's taking possession of the Development where possession is necessary to cure Lessee's default. No Termination Notice shall be effective to terminate the Lease if:

(1) Except as provided in section 5.c., within ninety (90) days after receipt of the Termination Notice, the Department cures any default which can be cured by payment or expenditure of money or without possession of the Development; or provides reasonable assurance and undertakings for the cure of such default. To effect a cure of Lessee's default, the Department may make any repair or improvement, do any other act or thing required of Lessee under the Lease, or do any act or thing which may be necessary or proper to prevent termination of the Lease. The Department and its agents and contractors will have full access to the Development for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by the Department shall be as effective to prevent a termination of the Lease as the same would have been if done by Lessee; or

(2) The Department commences and diligently pursues to completion proceedings for foreclosure and sale under the Trust Deed or assignment or transfer in lieu of foreclosure.

c. Defaults Not Susceptible to Department Cure. The Department shall not be required to perform any act which is not susceptible to performance by the Department, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Lessee's failure to pay any lien, charge or encumbrance which is junior in priority to the Trust Deed, or to pay any amount owed under an indemnity of Landlord by Lessee based on an event occurring prior to the Department's possession of the Development.

d. Landlord's Payment of Loan Payments. Landlord agrees that if Landlord cures Lessee's failure to make any payment due under the Loan, it shall seek reimbursement of amounts so paid solely from Lessee and the Department shall have no obligation to pay such amounts to Landlord.

e. Waiver of Breach or Default. On transfer of the Leasehold at any foreclosure sale under the Trust Deed or by acceptance of a deed in lieu of foreclosure, all violations, defaults and breaches by Lessee under the Lease, including, without limitation, nonpayment of rent or other amounts payable under the Lease, shall be deemed personal obligations of Lessee, and the Department or other Transferee shall be entitled to the New Lease as described in section 6 below without incurring or assuming any liability or obligation of, or claim against, Lessee under the Lease. Nothing in this section shall be deemed a waiver of any claim by Landlord against Lessee under the Lease.

f. Enforcement Not a Breach. No action taken by the Department to enforce its rights under any of the documents governing the Loan against either the Landlord or the Lessee, or both, including, without limitation, any actions taken to collect any amounts due and owing to the Department or any action to appoint a receiver for the Development or to otherwise protect the security of the Loan, shall constitute or result in a breach or violation of the Lease.

g. Status Quo Ante. Any default by Lessee shall not prejudice the Department if the Department chooses to cure such default within the applicable grace period, and Landlord acknowledges and agrees that upon the Department's cure of any such default, the Lease shall be restored status quo ante.

6. New Lease.

a. Conditions. Section 5 hereof notwithstanding, Landlord agrees to comply with the requirements of subsection 6.b., if the following conditions specified in this subsection 6.a. apply:

(1) The Lease is terminated for any reason whatsoever or if the Department forecloses under the Trust Deed or accepts a deed in lieu of foreclosure; and

(2) Department or other Transferee, whether or not such party has assumed the Lease, requests Landlord in writing to enter into a new lease of the Property within ninety (90) days after (a) the Department completes a foreclosure under the Trust Deed, or (b) the Department accepts a deed in lieu of foreclosure, or the end of the cure period provided to the Department in the Termination Notice (the "New Lease").

b. Obligations. If the conditions specified in section 6.a. have been satisfied, Landlord shall:

(1) upon receipt of the request for New Lease described in subsection 6.a.(2) above, enter into a New Lease of the Property with the Department, its nominee, or its successor-in-interest or other Transferee, for the remainder of the term of the Lease, effective as of the date of the termination or conveyance pursuant to a foreclosure sale or of a deed-in-lieu of foreclosure. The New Lease shall be at the rent of, and consistent with the terms, provisions, covenants, options and agreements contained in the terminated or foreclosed Lease, or granted by the Landlord in connection with the Lease, all as modified or supplemented by this Agreement;

(2) convey by grant deed to the Department, its nominee or its successor-in-interest or other Transferee, all title and interest to the Development, if any, which may become vested in Landlord as a result of any termination of the Lease or foreclosure of the Trust Deed or conveyance of Lessee's interest by deed in lieu of foreclosure;

(3) assign to the Department, its nominee, or its successor-in-interest or other Transferee, all of Landlord's interest, if any, in all existing subleases of all or any part of the Development and all attornments given by the sublessees.

c. Priority. The Leasehold estate and the title (if any) in the Development granted to the Department, its nominee or its successor-in-interest under this section 6

shall be prior to any mortgage or other lien, charge or encumbrance on the Development, except as approved in writing by the Department or as shown in the Report

7. Successors to Department. Subject to section 4 hereof, if the Leasehold is transferred by a foreclosure sale under the Trust Deed or by a deed in lieu of foreclosure, Landlord shall recognize the Transferee as the tenant under the Lease. Anything in the Lease notwithstanding, the rights and benefits of the Department under this Agreement shall benefit and may be exercised by any Transferee or by the holder of any mortgage or deed of trust which may be given to secure a portion of the purchase price in any sale by the Department or its successor(s) after the Department acquires the Leasehold or enters into a New Lease under this Agreement.

8. Diligence of Department. So long as the Department is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Landlord or Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the Department shall not be deemed for that reason to have failed to commence such proceedings or to have failed to prosecute diligently such proceedings, provided, however, that the Department shall use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

9. Condemnation and Insurance Proceeds.

a. Anything in the Lease notwithstanding, all fire and other hazard or casualty insurance proceeds shall be paid to the Department to the extent required by the Regulatory Agreement and subject to the rights of senior mortgage holders. In addition, in the event of any condemnation or partial condemnation, all condemnation award proceeds payable on account of such condemnation or partial condemnation shall be paid to the Department to the extent required by the Regulatory Agreement, subject to the rights of holders of senior mortgages, if any.

b. During the term of the Loan, the Department shall have the right to participate in any settlement or stipulation of judgment with respect to any condemnation proceeding entered into with the condemnation authority affecting all or any portion of the Development or any agreement to sell all or any portion of the Development in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without the Department's prior written consent, which consent shall be in the Department's sole and absolute discretion and may be conditioned upon the satisfaction of such terms and conditions as the Department may prescribe. Department shall also have the right (but not the obligation) to participate in any settlement, discussion, and/or arbitration proceeding between

Landlord and Lessee with respect to the apportionment or application of any condemnation award.

10. Certificate by Landlord. Within fifteen (15) calendar days after written request by the Department, Landlord shall execute and deliver to the Department or to any proposed purchaser or encumbrancer of Lessee's estate a certificate declaring (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Lease, the Property or the Development reasonably requested by the Department; and (iv) that Landlord understands the recipient will rely on the certificate and that the Landlord will describe in reasonable detail any exceptions to the foregoing statements.

11. Notices. Notices and other communications required by this Agreement shall be delivered by messenger to the addresses provided below or sent by U.S Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To Department: Department of Housing and Community Development
Multifamily Housing Program
P.O. Box 952054
Sacramento, CA 94252-2054
Attn. MHP Program Manager
or:
1800 Third Street, Suite 390
Sacramento, CA 95814
Attn: MHP Program Manager

To Landlord: _____

To Lessee: _____ Limited Partnership

These addresses may be changed by a notice given in the same manner provided that Landlord acknowledges and agrees that it shall have a duty to verify the addresses provided herein. Notices shall be effective on receipt.

12. Department's Rights Against Lessee. Nothing in this Agreement shall limit or restrict the Department's rights and remedies under the Note, the Trust Deed, the Regulatory Agreement, or any other agreement between the Department and Lessee.

13. Successors and Assigns. This Agreement shall inure to the benefit of and bind the successors and assigns of the Department, Landlord and Lessee.

14. Uninsured Hazard. Landlord agrees that neither the Department nor any person acquiring the Property or a portion of the Leasehold pursuant to a foreclosure under the Trust Deed, or deed in lieu of foreclosure, nor the lessee under a New Lease pursuant to section 6 hereof, nor any successive owner of a portion of the Leasehold after such foreclosure or New Lease shall have any obligation hereunder or under the Lease or New Lease to repair or reconstruct any damage or loss to the Development which is due to a hazard not required to be covered by insurance under the Lease or New Lease.

15. Duty to Repair. Landlord agrees that if the Department, its nominee, or its successor-in-interest succeeds to Lessee's leasehold interest in the Property and if the Development on the Property shall have been or becomes materially damaged before or after the date of such acquisition, the Department's, its nominee's, or its successor-in-interest's obligation, if any, to repair, replace or reconstruct the Development shall in any such event be limited to the greater of: i) the amount of the net insurance proceeds received by the Department by reason of that damage or ii) the amount the Department would be entitled to if in compliance with the minimum insurance requirements of Lessee under the Lease.

16. Options. Landlord and Lessee agree that the Department may exercise any option to extend the term of the Lease or to purchase any interest in the Property which is granted to Lessee under or in connection with the Lease.

17. Limitation on Liability. If the Department agrees to be bound by the terms of the Lease, or in the event of any Transfer to a Transferee, neither the Department nor Transferee shall have any obligation under the Lease with respect to any liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of actions, charges, judgments, costs, and expenses (including architects' and attorneys' fees and court costs) arising out of or resulting from acts, omissions, circumstances or events occurring before or existing at the time of such Transfer or the Department's agreement to be bound by the Lease. Nothing in this Agreement or in the Lease shall impose on the Department any liability to perform the obligations of Lessee under the Lease or require the Department to assume the Lease unless and until the Department acquires Lessee's rights by foreclosure or deed in lieu of foreclosure. After acquiring Lessee's rights by foreclosure or deed in lieu of foreclosure, the Department shall be liable to perform Lessee's obligations only until the Department assigns or transfers the

Leasehold. The Department shall not, however, be required to cure Lessee's defaults occurring before the Department's acquisition of Lessee's rights by foreclosure.

18. Conflict With Lease. The provisions herein are intended to be supplementary to, and not in derogation of, the parties' rights and obligations contained in the Lease (including all of the Department's rights under the Lease as a leasehold mortgagee), but in the event of any conflict or inconsistency between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall govern and control, and the Lease shall be deemed to be modified hereby.

19. Attorney Fees, Costs. In any action to enforce or relating to any provision of this Agreement, the prevailing party shall be entitled to recover from the other party, its costs and expenses. The term "costs and expenses" as used herein shall include all costs and expenses actually and reasonably incurred, including by not limited to attorney's fees; filing, motion, and jury fees; juror food and lodging; taping, videotaping, and transcribing depositions and travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; expenses of attachment including keeper's fees; premiums on surety bonds; ordinary witness fees pursuant to section 68093 of the California Government Code; fees of expert witnesses whether or not ordered by the court; transcripts of court proceedings whether or not ordered by the court; court reporters fees as established by statute; investigation expenses in preparing the case for trial; postage, telephone, and photocopying charges; costs in investigation of jurors or in preparation for voir dire; models, blowups and photocopies of exhibits, and any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor.

20. Acknowledgment. Landlord and Lessee acknowledge that the Department is relying on the foregoing representations, warranties, covenants and agreements of the undersigned in making the Loan to Lessee, and warrants and affirms to and for the benefit of the Department that each of those representations is true, correct and complete as of this date.

DEPARTMENT:
Department of Housing and Community Development, a public agency of the State of California

By: _____
_____, Manager
Multifamily Housing Program

LANDLORD:

By: _____
Name: _____
Title: _____

LESSEE:

_____ **Limited Partnership,**
a California limited partnership

By: _____

Name: _____

Title: _____

EXHIBIT A
(Legal Description)